IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1039 OF 2006

Dr.Sudhir Gopalkrishna Nidmarti
& Ors. ...Petitioners

Vs.

State of Maharashtra & Anr. ...Respondents

Ms Chandana Salgaonkar-Radia for the Petitioners.
Shri Rajesh More, A.P.P. for the State.
Shri J.Shekhar for the Respondent No.2.

CORAM : A. S. OKA, J.
DATE : SEPTEMBER 19, 2006.

P.C.:

1. Rule. The learned A.P.P. waives service for the first Respondent. The learned Advocate appearing for the second Respondent waives service. Taken up for hearing forthwith.

2. The second Respondent has filed a private complaint against the Petitioners in the court of Judicial Magistrate, First Class. An order was passed by the learned Judicial Magistrate issuing process on the said complaint. A Revision Application was filed by the Petitioners before the Sessions Court for challenging the order issuing process. As there was a delay in filing the Revision Application, the Petitioners filed an Application for condonation of

delay. By order dated 06th January, 2006 the learned Additional Sessions Judge has rejected the Application for condonation of delay. This is the order impugned in this Petition.

3. The learned counsel for the Petitioners submitted that delay was only of 45 days which was adequately explained by the Petitioners. She submitted that a very technical view is taken by the learned Additional Sessions Judge. The learned counsel appearing for the second Respondent supported the impugned judgment and order.

3. I have considered the submissions. The order issuing process was passed on 09th May, 2005. The Revision Application was filed in the month of November 2005 and there was a delay of 45 days in filing the Revision Application. The case of the Petitioners was that the Petitioner No.1 was abroad from 15th July, 2005 to 08th August, 2005 and thereafter from 15th October, 2005 to 06th November, 2005. While deciding an Application for condonation of delay under section 5 of the Limitation Act, 1963 the court was required to adopt a liberal approach. In this case the delay was only of 45 days for which a reasonable explanation was

offered by the Petitioners. In my view, the delay deserves to be condoned.

4. Hence, I pass the following order:

(i) The impugned Judgment and order dated 06th January, 2006 is quashed and set aside and Misc. Application No.223 of 2005 is allowed by condoning delay in filing Revision Application.

(ii) The Sessions Court will decide the Revision Application on merits in accordance with law.

(iii) All contentions of the parties in the pending Revision Application are kept open.

(iv) Rule is accordingly made absolute in above terms.

JUDGE